

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05cr216

UNITED STATES OF AMERICA)
)
)
vs.) O R D E R
)
)
ELGIN BAILEY (1))
QUALO MARTEZ LOWERY (2))
)
_____)

THIS MATTER is before the Court on the motion of the government to sever the defendants for trial. (Doc. No. 86). Defendant Qualo Lowery responded in opposition to the motion. (Doc. No. 100).

The government seeks to introduce defendant Elgin Bailey's post-arrest statement that defendant Lowery was his source for the cocaine. (Doc. No. 86: Motion at ¶ 2). Count One of the Indictment charges Bailey and Lowery of conspiring to possess with intent to distribute cocaine and cocaine base. (Doc. No. 1: Indictment). Therefore, the Court finds that the full, unredacted statement would be relevant to proving the charge at issue. However, in a joint trial of defendants Bailey and Lowery, the introduction of Bailey's statement in the government's case-in-chief would violate Lowery's Sixth Amendment right of confrontation; therefore, severance is required. United States v. Harris, 409 F.2d 77, 81 (4th Cir. 1969).

IT IS, THEREFORE, ORDERED, that the government's motion for severance is GRANTED.

The Clerk is directed to certify copies of this order to the defendant, counsel for the defendant, to the United States Attorney, the United States Marshals service, and the U.S. Probation office.

Signed: April 12, 2006

Robert J. Conrad Jr.

Robert J. Conrad, Jr.
United States District Judge

